



General Assembly

January Session, 2015

Raised Bill No. 6751

LCO No. 3260



Referred to Committee on BANKING

Introduced by:
(BA)

***AN ACT CONCERNING THE EFFICIENT CONCLUSION OF THE
FORECLOSURE MEDIATION PROGRAM.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 49-31n of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2015*):

3 (a) Prior to July 1, 2016: (1) Any action for the foreclosure of a
4 mortgage on residential real property with a return date during the
5 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to
6 the provisions of subsection (b) of this section, and (2) any action for
7 the foreclosure of a mortgage on (A) residential real property with a
8 return date during the period from July 1, 2009, to June 30, 2016,
9 inclusive, or (B) real property owned by a religious organization with a
10 return date during the period from October 1, 2011, to June 30, 2016,
11 inclusive, shall be subject to the provisions of subsection (c) of this
12 section.

13 (b) (1) For any action for the foreclosure of a mortgage on residential
14 real property with a return date during the period from July 1, 2008, to

15 June 30, 2009, inclusive, the mediation period under the foreclosure
16 mediation program established in section 49-31m shall commence
17 when the court sends notice to each appearing party that a foreclosure
18 mediation request form has been submitted by a mortgagor to the
19 court, which notice shall be sent not later than three business days after
20 the court receives a completed foreclosure mediation request form. The
21 mediation period shall conclude not later than the conclusion of the
22 third mediation session between the mortgagor and mortgagee or
23 seven months after the return date, whichever is earlier, except that the
24 court may, in its discretion, for good cause shown, upon the motion of
25 any party or the mediator, extend the mediation period subject to the
26 provisions of subdivision (9) of this subsection or shorten the
27 mediation period.

28 (2) The first mediation session shall be held not later than fifteen
29 business days after the court sends notice to all parties that a
30 foreclosure mediation request form has been submitted to the court.
31 The mortgagor and mortgagee shall appear in person at each
32 mediation session and shall have the ability to mediate, except that (A)
33 if a party is represented by counsel, the party's counsel may appear in
34 lieu of the party to represent the party's interests at the mediation,
35 provided the party has the ability to mediate, the mortgagor attends
36 the first mediation session in person, and the party is available (i)
37 during the mediation session by telephone, and (ii) to participate in the
38 mediation session by speakerphone, provided an opportunity is
39 afforded for confidential discussions between the party and party's
40 counsel, (B) following the initial mediation session, if there are two or
41 more mortgagors who are self-represented, only one mortgagor shall
42 be required to appear in person at each subsequent mediation session
43 unless good cause is shown, provided the other mortgagors are
44 available (i) during the mediation session, and (ii) to participate in the
45 mediation session by speakerphone, and (C) if a party suffers from a
46 disability or other significant hardship that imposes an undue burden
47 on such party to appear in person, the mediator may grant permission

48 to such party to participate in the mediation session by telephone. A
49 mortgagor's spouse, who is not a mortgagor but who lives in the
50 subject property, may appear at each mediation session, provided all
51 appearing mortgagors consent, in writing, to such spouse's appearance
52 or such spouse shows good cause for his or her appearance and the
53 mortgagors consent in writing to the disclosure of nonpublic personal
54 information to such spouse. If the mortgagor has submitted a complete
55 package of financial documentation in connection with a request for a
56 particular foreclosure alternative, the mortgagee shall have thirty-five
57 days from the receipt of the completed package to respond with a
58 decision and, if the decision is a denial of the request, provide the
59 reasons for such denial. If the mortgagor has, in connection with a
60 request for a foreclosure alternative, submitted a financial package that
61 is not complete, or if the mortgagee's evaluation of a complete package
62 reveals that additional information is necessary to underwrite the
63 request, the mortgagee shall request the missing or additional
64 information within a reasonable period of time of such evaluation. If
65 the mortgagee's evaluation of a complete package reveals that
66 additional information is necessary to underwrite the request, the
67 thirty-five-day deadline for a response shall be extended but only for
68 so long as is reasonable given the timing of the mortgagor's submission
69 of such additional information and the nature and context of the
70 required underwriting. Not later than the third business day after each
71 mediation session held on or after June 18, 2013, the mediator shall file
72 with the court a report indicating, to the extent applicable, (i) the
73 extent to which each of the parties complied with the requirements set
74 forth in this subdivision, including the requirement to engage in
75 conduct that is consistent with the objectives of the mediation program
76 and to possess the ability to mediate, (ii) whether the mortgagor
77 submitted a complete package of financial documentation to the
78 mortgagee, (iii) a general description of the foreclosure alternative
79 being requested by the mortgagor, (iv) whether the mortgagor has
80 previously been evaluated for similar requests, whether prior to
81 mediation or in mediation, and, if so, whether there has been any

82 apparent change in circumstances since a decision was made with
83 respect to that prior evaluation, (v) whether the mortgagee has
84 responded to the mortgagor's request for a foreclosure alternative and,
85 if so, a description of the response and whether the mediator is aware
86 of any material reason not to agree with the response, (vi) whether the
87 mortgagor has responded to an offer made by the mortgagee on a
88 reasonably timely basis, and if so, an explanation of the response, (vii)
89 whether the mortgagee has requested additional information from the
90 mortgagor and, if so, the stated reasons for the request and the date by
91 which such additional information shall be submitted so that
92 information previously submitted by the mortgagor, to the extent
93 possible, may still be used by the mortgagee in conducting its review,
94 (viii) whether the mortgagor has supplied, on a reasonably timely
95 basis, any additional information that was reasonably requested by the
96 mortgagee, and, if not, the stated reason for not doing so, (ix) if
97 information provided by the mortgagor is no longer current for
98 purposes of evaluating a foreclosure alternative, a description of the
99 out-of-date information and an explanation as to how and why such
100 information is no longer current, (x) whether the mortgagee has
101 provided a reasonable explanation of the basis for a decision to deny a
102 request for a loss mitigation option or foreclosure alternative and
103 whether the mediator is aware of any material reason not to agree with
104 that decision, (xi) whether the mortgagee has complied with the time
105 frames set forth in this subdivision for responding to requests for
106 decisions, (xii) if a subsequent mediation session is expected to occur, a
107 general description of the expectations for such subsequent session
108 and for the parties prior to such subsequent session and, if not
109 otherwise addressed in the report, whether the parties satisfied the
110 expectations set forth in previous reports, and (xiii) a determination of
111 whether the parties will benefit from further mediation. The mediator
112 shall deliver a copy of such report to each party to the mediation when
113 the mediator files the report. The parties shall have the opportunity to
114 submit their own supplemental information following the filing of the
115 report, provided such supplemental information shall be submitted

116 not later than five business days following the receipt of the mediator's
117 report. Any request by the mortgagee to the mortgagor for additional
118 or updated financial documentation shall be made in writing. The
119 court may impose sanctions on any party or on counsel to a party if
120 such party or such counsel engages in intentional or a pattern or
121 practice of conduct during the mediation process that is contrary to the
122 objectives of the mediation program. Any sanction that is imposed
123 shall be proportional to the conduct and consistent with the objectives
124 of the mediation program. Available sanctions shall include, but not be
125 limited to, terminating mediation, ordering the mortgagor or
126 mortgagee to mediate in person, forbidding the mortgagee from
127 charging the mortgagor for the mortgagee's attorney's fees, awarding
128 attorney's fees, and imposing fines. In the case of egregious
129 misconduct, the sanctions shall be heightened. The court shall not
130 award attorney's fees to any mortgagee for time spent in any
131 mediation session if the court finds that such mortgagee has failed to
132 comply with this subdivision, unless the court finds reasonable cause
133 for such failure.

134 (3) If the mediator reports to the court that the parties will not
135 benefit from further mediation, the mediation period shall terminate
136 automatically. If the mediator reports to the court after the first or
137 second mediation session that the parties may benefit from further
138 mediation, the mediation period shall continue.

139 (4) If the mediation period concludes and certain issues have not
140 been resolved pursuant to the mediation, the mediator may refer the
141 mortgagor to any appropriate community-based services that are
142 available.

143 (5) The Chief Court Administrator shall establish policies and
144 procedures to implement this subsection. Such policies and procedures
145 shall, at a minimum, provide that the mediator shall advise the
146 mortgagor at the first meeting required by subdivision (4) of
147 subsection (c) of section 49-31/ that a judgment of strict foreclosure or

148 foreclosure by sale may cause the mortgagor to lose the residential real
149 property to foreclosure.

150 (6) In no event shall any determination issued by a mediator under
151 this program form the basis of an appeal of any foreclosure judgment.

152 (7) Foreclosure mediation request forms shall not be accepted by the
153 court under this subsection on or after July 1, 2016, and the foreclosure
154 mediation program shall terminate when all mediation has concluded
155 with respect to any applications submitted to the court prior to July 1,
156 2016.

157 (8) At any time during the mediation period, the mediator may refer
158 a mortgagor who is the owner-occupant of one-to-four family
159 residential real property to the mortgage assistance programs, except
160 that any such referral shall not prevent a mortgagee from proceeding
161 to judgment when the conditions specified in subdivision (6) of
162 subsection (b) of section 49-311 have been satisfied.

163 (9) (A) The mediation period shall conclude following the third
164 mediation session or if more than seven months have elapsed since the
165 return date. Not later than fifteen days following the conclusion of the
166 mediation period, and any extended mediation sessions held in
167 accordance with this subdivision, any party may move for, or the
168 mediator may request, an extension of the mediation period. The court
169 shall grant only one additional mediation session per motion or
170 request upon a finding that it is highly probable the parties will reach
171 an agreement through mediation. The court may also grant one
172 additional mediation session per motion or request upon a finding that
173 any party has engaged, either intentionally or by a pattern or practice,
174 in conduct that is contrary to the objectives of the mediation program.
175 The court shall make its ruling not later than twenty days after the
176 filing of such motion or request, and no judgment of strict foreclosure
177 or any judgment ordering a foreclosure sale shall be entered until (i)
178 the court denies the motion or request, or (ii) the conclusion of the

179 extended mediation session, except as provided in subparagraph (B) of
180 this subdivision. Upon the grant of an additional mediation session
181 following the proper finding, the court shall establish an expeditious
182 deadline for such extended mediation session to occur. Such extended
183 mediation period shall conclude following such extended mediation
184 session.

185 (B) The mediation period may be extended for one additional
186 mediation session without a hearing held pursuant to this subdivision
187 provided all parties to the mediation agree that such parties would
188 benefit from such a session and, in consultation with the mediator,
189 establish an expeditious deadline for such session to take place.

190 (C) To determine whether to extend mediation, the court may
191 consider all matters that have arisen in the mediation, including, but
192 not limited to, the number of motions to extend mediation, the reasons
193 for which an agreement has not been reached, the objectives of the
194 mediation program, the extent to which the parties will benefit from
195 further mediation, the reports submitted by the mediator, papers
196 submitted in connection with any motion, and any supplemental
197 reports submitted by a party. The court shall articulate its reasons in
198 the order granting or denying any such motion or request to extend
199 mediation.

200 (10) For any case pending as of October 1, 2013, in which mediation
201 is ongoing, (A) if three or fewer sessions have been held, such case
202 shall be treated as if no sessions have been held as of said date for
203 purposes of subdivision (9) of this subsection, and (B) if four or more
204 sessions have been held, then any party or the mediator may move to
205 terminate the mediation period or extend such period in accordance
206 with subdivision (9) of this subsection and, if no such motion to extend
207 is made, the mediation period shall conclude after the third mediation
208 session occurring after October 1, 2013.

209 (c) (1) For any action for the foreclosure of a mortgage on residential

210 real property with a return date during the period from July 1, 2009, to
211 June 30, 2016, inclusive, or for any action for the foreclosure of a
212 mortgage on real property owned by a religious organization with a
213 return date during the period from October 1, 2011, to June 30, 2016,
214 inclusive, the mediation period under the foreclosure mediation
215 program established in section 49-31m shall commence when the court
216 sends notice to each appearing party scheduling the first foreclosure
217 mediation session. The mediation period shall conclude not later than
218 the conclusion of the third mediation session between the mortgagor
219 and mortgagee or seven months after the return date, whichever is
220 earlier, except that the court may, in its discretion, for good cause
221 shown, upon the motion of any party or request by the mediator,
222 extend the mediation period subject to the provisions of subdivision
223 (9) of this subsection or shorten the mediation period.

224 (2) The mortgagor and mortgagee shall appear in person at each
225 mediation session and shall have the ability to mediate, except that (A)
226 if a party is represented by counsel, the party's counsel may appear in
227 lieu of the party to represent the party's interests at the mediation,
228 provided the party has the ability to mediate, the mortgagor attends
229 the first mediation session in person and the party is available (i)
230 during the mediation session by telephone, and (ii) to participate in the
231 mediation session by speakerphone, provided an opportunity is
232 afforded for confidential discussions between the party and party's
233 counsel, (B) following the initial mediation session, if there are two or
234 more mortgagors who are self-represented, only one mortgagor shall
235 be required to appear in person at each subsequent mediation session
236 unless good cause is shown, provided the other mortgagors are
237 available (i) during the mediation session, and (ii) to participate in the
238 mediation session by speakerphone, and (C) if a party suffers from a
239 disability or other significant hardship that imposes an undue burden
240 on such party to appear in person, the mediator may grant permission
241 to such party to participate in the mediation session by telephone. A
242 mortgagor's spouse, who is not a mortgagor but who lives in the

243 subject property, may appear at each mediation session, provided all
244 appearing mortgagors consent, in writing, to such spouse's appearance
245 or such spouse shows good cause for his or her appearance and the
246 mortgagors consent, in writing, to the disclosure of nonpublic personal
247 information to such spouse. If the mortgagor has submitted a complete
248 package of financial documentation in connection with a request for a
249 particular foreclosure alternative, the mortgagee shall have thirty-five
250 days from the receipt of the completed package to respond with a
251 decision and, if the decision is a denial of the request, provide the
252 reasons for such denial. If the mortgagor has, in connection with a
253 request for a foreclosure alternative, submitted a financial package that
254 is not complete, or if the mortgagee's evaluation of a complete package
255 reveals that additional information is necessary to underwrite the
256 request, the mortgagee shall request the missing or additional
257 information within a reasonable period of time of such evaluation. If
258 the mortgagee's evaluation of a complete package reveals that
259 additional information is necessary to underwrite the request, the
260 thirty-five-day deadline for a response shall be extended but only for
261 so long as is reasonable given the timing of the mortgagor's submission
262 of such additional information and the nature and context of the
263 required underwriting. Not later than the third business day after each
264 mediation session, the mediator shall file with the court a report
265 indicating, to the extent applicable, (i) the extent to which each of the
266 parties complied with the requirements set forth in this subdivision,
267 including the requirement to engage in conduct that is consistent with
268 the objectives of the mediation program and to possess the ability to
269 mediate, (ii) whether the mortgagor submitted a complete package of
270 financial documentation to the mortgagee, (iii) a general description of
271 the foreclosure alternative being requested by the mortgagor, (iv)
272 whether the mortgagor has previously been evaluated for similar
273 requests, whether prior to mediation or in mediation, and, if so,
274 whether there has been any apparent change in circumstances since a
275 decision was made with respect to that prior evaluation, (v) whether
276 the mortgagee has responded to the mortgagor's request for a

277 foreclosure alternative and, if so, a description of the response and
278 whether the mediator is aware of any material reason not to agree with
279 the response, (vi) whether the mortgagor has responded to an offer
280 made by the mortgagee on a reasonably timely basis, and if so, an
281 explanation of the response, (vii) whether the mortgagee has requested
282 additional information from the mortgagor and, if so, the stated
283 reasons for the request and the date by which such additional
284 information shall be submitted so that information previously
285 submitted by the mortgagor, to the extent possible, may still be used
286 by the mortgagee in conducting its review, (viii) whether the
287 mortgagor has supplied, on a reasonably timely basis, any additional
288 information that was reasonably requested by the mortgagee, and, if
289 not, the stated reason for not doing so, (ix) if information provided by
290 the mortgagor is no longer current for purposes of evaluating a
291 foreclosure alternative, a description of the out-of-date information
292 and an explanation as to how and why such information is no longer
293 current, (x) whether the mortgagee has provided a reasonable
294 explanation of the basis for a decision to deny a request for a loss
295 mitigation option or foreclosure alternative and whether the mediator
296 is aware of any material reason not to agree with that decision, (xi)
297 whether the mortgagee has complied with the time frames set forth in
298 this subdivision for responding to requests for decisions, (xii) if a
299 subsequent mediation session is expected to occur, a general
300 description of the expectations for such subsequent session and for the
301 parties prior to such subsequent session and, if not otherwise
302 addressed in the report, whether the parties satisfied the expectations
303 set forth in previous reports, and (xiii) a determination of whether the
304 parties will benefit from further mediation. The mediator shall deliver
305 a copy of such report to each party to the mediation when the mediator
306 files the report. The parties shall have the opportunity to submit their
307 own supplemental information following the filing of the report,
308 provided such supplemental information shall be submitted not later
309 than five business days following the receipt of the mediator's report.
310 Any request by the mortgagee to the mortgagor for additional or

311 updated financial documentation shall be made in writing. The court
312 may impose sanctions on any party or on counsel to a party if such
313 party or such counsel engages in intentional or a pattern or practice of
314 conduct during the mediation process that is contrary to the objectives
315 of the mediation program. Any sanction that is imposed shall be
316 proportional to the conduct and consistent with the objectives of the
317 mediation program. Available sanctions shall include, but not be
318 limited to, terminating mediation, ordering the mortgagor or
319 mortgagee to mediate in person, forbidding the mortgagee from
320 charging the mortgagor for the mortgagee's attorney's fees, awarding
321 attorney's fees, and imposing fines. In the case of egregious
322 misconduct, the sanctions shall be heightened. The court shall not
323 award attorney's fees to any mortgagee for time spent in any
324 mediation session if the court finds that such mortgagee has failed to
325 comply with this subdivision, unless the court finds reasonable cause
326 for such failure.

327 (3) If the mediator reports to the court that the parties will not
328 benefit from further mediation, the mediation period shall terminate
329 automatically. If the mediator reports to the court after the first or
330 second mediation session that the parties may benefit from further
331 mediation, the mediation period shall continue.

332 (4) If the mediation period concludes and certain issues have not
333 been resolved pursuant to the mediation, the mediator may refer the
334 mortgagor to any appropriate community-based services that are
335 available in the judicial district, but any such referral shall not cause a
336 delay in the mediation process.

337 (5) The Chief Court Administrator shall establish policies and
338 procedures to implement this subsection. Such policies and procedures
339 shall, at a minimum, provide that the mediator shall advise the
340 mortgagor at the first meeting required by subdivision (4) of
341 subsection (c) of section 49-311 that: (A) Such mediation does not
342 suspend the mortgagor's obligation to respond to the foreclosure

343 action beyond the limited time frame described in subdivision (6) of
344 subsection (c) of section 49-31l; and (B) a judgment of strict foreclosure
345 or foreclosure by sale may cause the mortgagor to lose the residential
346 real property or real property owned by a religious organization to
347 foreclosure.

348 (6) In no event shall any determination issued by a mediator under
349 this program form the basis of an appeal of any foreclosure judgment.

350 (7) The foreclosure mediation program shall terminate when all
351 mediation has concluded with respect to any foreclosure action with a
352 return date during the period from July 1, 2009, to June 30, 2016,
353 inclusive.

354 (8) At any time during the mediation period, the mediator may refer
355 a mortgagor who is the owner-occupant of one-to-four family
356 residential real property to the mortgage assistance programs, except
357 that any such referral shall not prevent a mortgagee from proceeding
358 to judgment when the conditions specified in subdivision (6) of
359 subsection (c) of section 49-31l have been satisfied.

360 (9) (A) The mediation period shall conclude following the third
361 mediation session or if more than seven months have elapsed since the
362 return date. Not later than fifteen days following the conclusion of the
363 mediation period, and any subsequent extended mediation sessions
364 held in accordance with this subdivision, any party may move for, or
365 the mediator may request, an extension of the mediation period. The
366 court shall grant only one additional mediation session per motion or
367 request upon a finding that it is highly probable the parties will reach
368 an agreement through mediation. The court may also grant one
369 additional mediation session per motion or request upon a finding that
370 any party has engaged, either intentionally or by a pattern or practice,
371 in conduct that is contrary to the objectives of the mediation program.
372 The court shall make its ruling not later than twenty days after the
373 filing of such motion or request, and no judgment of strict foreclosure

374 or any judgment ordering a foreclosure sale shall be entered until (i)
375 the court denies the motion or request, or (ii) the conclusion of the
376 subsequent extended mediation session, except as provided in
377 subparagraph (B) of this subdivision. Upon the grant of an additional
378 mediation session following the proper finding, the court shall
379 establish a reasonably expeditious deadline for such subsequent
380 extended mediation session to occur. Such extended mediation period
381 shall conclude following such subsequent extended mediation session.

382 (B) The mediation period may be extended for one additional
383 mediation session without a hearing held pursuant to this subdivision
384 provided all parties to the mediation agree that such parties would
385 benefit from such a session and, in consultation with the mediator,
386 establish a reasonably expeditious deadline for such session to take
387 place.

388 (C) To determine whether to extend mediation, the court may
389 consider all matters that have arisen in the mediation, including, but
390 not limited to, the number of motions to extend mediation, the reasons
391 for which an agreement has not been reached, the objectives of the
392 mediation program, the extent to which the parties will benefit from
393 further mediation, the reports submitted by the mediator, papers
394 submitted in connection with any motion, and any supplemental
395 reports submitted by a party. The court shall articulate its reasons in
396 the order granting or denying any such motion or request to extend
397 mediation.

398 (10) For any case pending as of October 1, 2013, in which mediation
399 is ongoing, (A) if three or fewer sessions have been held, such case
400 shall be treated as if no sessions have been held as of said date for
401 purposes of subdivision (9) of this subsection, and (B) if four or more
402 sessions have been held, then any party or the mediator may move to
403 terminate the mediation period or extend such period in accordance
404 with subdivision (9) of this subsection and, if no such motion to extend
405 is made, the mediation period shall conclude after the third mediation

406 session occurring after October 1, 2013.

407 (d) No new foreclosure mediation request forms shall be accepted
408 under the foreclosure mediation program on or after July 1, 2016. After
409 July 1, 2016, all ongoing mediations shall proceed to a fair, final and
410 efficient resolution.

411 ~~[(d)]~~ (e) (1) Not later than February 14, 2014, the Chief Court
412 Administrator shall submit, in accordance with the provisions of
413 section 11-4a, to the joint standing committee of the General Assembly
414 having cognizance of matters relating to banks, a summary regarding
415 the mediation program and a general summary of the data collected in
416 the reports submitted pursuant to subdivision (2) of subsections (b)
417 and (c) of this section from July 1, 2013, to December 31, 2013,
418 inclusive. Such summaries shall include, but not be limited to, the
419 aggregate data regarding the number of cases in mediation, the
420 number of mediation sessions held, the number of agreements reached
421 before the conclusion of the mediation period, the number of motions
422 or requests for an extension or continuance and the identity of the
423 party that made such a motion or request, whether the loan at issue
424 was serviced by a third party, the judicial district in which the
425 mediation took place and whether the mortgagor was self-represented.

426 (2) Not later than February 14, 2015, the Chief Court Administrator
427 shall submit, in accordance with the provisions of section 11-4a, to the
428 joint standing committee of the General Assembly having cognizance
429 of matters relating to banks, a summary of the reports submitted from
430 July 1, 2013, to December 31, 2014, inclusive, pursuant to subdivision
431 (2) of subsections (b) and (c) of this section. The detailed data points for
432 such summary, including data to be collected but not reported, shall be
433 developed by the Chief Court Administrator in consultation with
434 representatives from the Governor's office, the banking industry and
435 consumer advocates.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2015</i>	49-31n
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Statement of Purpose:

To ensure that no new foreclosure mediations are accepted into the program after July 1, 2016, and to allow program staff to efficiently expedite the resolution of ongoing mediations prior to the statutorily mandated sunset of the program.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]